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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,143	02/20/2004	John D. Wilkey	2039.01SS00/RFE (210631US)	5387
37774	7590	04-15/2005	EXAMINER	
WILLIAMS, MORGAN & AMERSON, P.C. 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			MULLIS, JEFFREY C	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,143

Applicant(s)

WILKEY ET AL.

Examiner

Jeffrey C. Mullis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>904</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-41 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The term "molecular weight" where unqualified as to the type of molecular weight, for instance number or weight average molecular weight is unclear since these various expressions of molecular weight vary from one another.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 13, 16-20 and 22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Swisher et al. (U.S. Published Application 2002/0004267).

Swisher et al. disclose a composition containing a tapered conjugated diene-mono vinylarene block copolymer and at least one styrenic polymer. Note the Abstract. Note the Examples starting in paragraph 117 where styrene and mixed charges of styrene and butadiene are polymerized sequentially in the

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presence of a randomizer, THF, a process similar to that used by applicants' specification and furthermore given that substantial amounts of butadiene are used along with styrene in the tapered blocks would reasonably appear that applicants' block characteristic would be inherent. Molecular weights for block copolymers A1 and A2 described in paragraphs 120-122 can be calculated (number average) for the terminal styrenic blocks as being far below the 60,000 molecular weight recited by the independent claims assuming that one molecule of alkyl lithium initiator polymerizes a single chain of block copolymer which is generally known in the art for polymerization of styrene/diene copolymers using alkyl lithium initiation. Note the footnote to Table 1 where it is disclosed that styrene-methyl methacrylate copolymer is added to the block copolymer compositions. Note the footnote to Table 2 where it is disclosed that blends are further blended with KRO3, a styrene-butadiene block copolymer which is a commercial product of Chevron Phillips Chemical Co.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Claims 11, 12, 14, 23-34 and 37-41 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Swisher et al., cited above.

With regard to the limitation of specific amounts of butyl acrylate units present in the component "ii" of applicants as set out in claims 11, 12 and 14 by the presence of other methacrylate units in specific amounts and with regard to the production of a film from the claimed composition or a packaging article,

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patentees at paragraphs 98-101 specifically disclose copolymerization of styrene with monomers such as butyl acrylate and in paragraph 98 specifically discloses that the acrylate comonomers are present in a minor amount, i.e. less than 50%. Note paragraph 3 of the published application where it is disclosed that compositions may be used to produce packaging such as blister packaging (i.e. a packaging containing an air filled film). Therefore conversion of the composition of Swisher et al. into films or packaging use of applicants' specific monomers in their amounts would have been obvious to a practitioner having ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results.

U.S. Patent 5,628,950, cited of interest discloses that KRO3 is a styrene-butadiene copolymer containing 75% styrene and 25% butadiene.

It is noted that the reference relied upon discloses some of assignee's tradenamed materials. If applicants are aware of any publicly available information regarding what these materials are, they are requested to submit them since such information would appear to be relevant to patentability.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (571) 272-1075. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (571) 272-1078. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-0994.

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J. Mullis:cdc

March 24, 2005

Jeffrey Mullis
Primary Examiner
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A handwritten signature in black ink, appearing to be 'J. Mullis', written over the printed name and title.